

PREPARED BY AND RETURN TO:
James Rainsford
COLEMAN, GLEDHILL, HARGRAVE,
MERRITT & RAINSFORD, P.C.
P.O. Drawer 1529
Hillsborough, NC 27278

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12-CVS-000723

TOWN OF CHAPEL HILL,)
)
)
Plaintiff,)
)
)
v.)
)
)
PERSIMMON PROPERTIES, LLC,)
WELLS FARO HOME MORTGAGE,)
WILLIAM R. ECHOLS (TRUSTEE),)
HOME SERVICES LENDING LLC)
SERIES A, THORNBURG)
MORTGAGE, ORANGE WATER AND)
SEWER AUTHORITY, and ORANGE)
COUNTY,)
Defendants.)

CONSENT FINAL ORDER
AND JUDGMENT

THIS CAUSE came on before the Court for entry of this Final Order and Judgment upon the request and with the consent of all parties who have appeared in this action.

From the Court's examination of the record in this action and from the stipulations of the parties who have appeared in this action as evidenced by the signature of their counsel below, the Court makes the following findings of fact:

1. This action was duly instituted on May 4, 2012, by the issuance of Summons and the filing of a Complaint, Declaration of Taking and Notice of Deposit, along with a deposit into the Court of Fifteen Thousand Three Hundred and 00/100 Dollars (\$15,300.00), the sum estimated by Plaintiff, Town of Chapel Hill, to be just compensation for the taking of the property identified in the Complaint, Declaration of Taking and Notice of Deposit and as further described in Exhibit B thereto as 12,378 square feet of permanent easement as further shown on that certain Bolin Creek Greenway Easement Exhibit attached as Exhibit C thereto, copies of which are attached hereto and incorporated by reference.

2. All Defendants were duly and properly served with process.

3. All persons having or claiming to have an interest in the property taken are parties to this action and are properly before the Court.

4. As is set forth in that certain Order Granting Disbursement of Deposit entered August 14, 2013 granted to Persimmon Properties, LLC all right, title and interest in all proceeds of the property taken in this action.

5. All other Defendants have been dismissed from this action or disclaimed any interest in proceeds of the property taken, or have failed to answer or otherwise plead within the time allowed.

6. Persimmon Properties, LLC consents to the entry of this order and stipulates to the findings of fact and consents to the conclusions of law as set forth in this order.

7. Persimmon Properties, LLC is unaware of any other individual or entity claiming any interest in the property taken.

8. Plaintiff, Town of Chapel Hill, possesses the power, duty and authority under North Carolina law to acquire certain property interests for the public use and purpose to provide for the recreation, welfare, and comfort of the public; to promote the physical, mental, and cultural development of its citizens; and to establish and upgrade a program of public recreation and leisure time activity by constructing a public greenway.

9. Persimmon Properties, LLC answered and thereafter Plaintiff and these Defendants engaged in formal discovery and thereafter Plaintiff and Persimmon Properties, LLC participated in court-ordered mediation. Persimmon Properties, LLC and Plaintiff, Town of Chapel Hill, have reached agreement as to just compensation for the property taken in this action, inclusive of any interest, cost or attorneys' fees to which Persimmon Properties, LLC might otherwise have claimed to be entitled.

10. Plaintiff, Town of Chapel Hill, has paid to Persimmon Properties, LLC through an initial deposit in this action in the amount of Fifteen Thousand Three Hundred and No/100 Dollars (\$15,300.00) and will pay an additional Nine Thousand Seven Hundred and No/100 Dollars directly to Persimmon Properties, LLC for the total sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), the agreed upon just

compensation for the property taken as identified in the Complaint, Declaration of Taking and Notice of Deposit and Persimmon Properties, LLC waives any right it might otherwise have to seek additional sums from Plaintiff, Town of Chapel Hill, with regard to the property taken as described on Exhibits B and C of the Complaint, Declaration of Taking and Notice of Deposit.

11. Each party agrees to bear its own costs in this action, including attorneys' fees.

WHEREFORE, based upon the foregoing findings of fact, the Court concludes the following, as a matter of law:

1. That Plaintiff, Town of Chapel Hill, was entitled to acquire and has acquired the permanent easement over property of Persimmon Properties, LLC as described in the Complaint, Declaration of Taking and Notice of Deposit filed in this action, and as further described in Exhibit B thereto as 12,378 square feet of permanent easement and as further shown on that certain Bolin Creek Greenway Easement Exhibit attached to the Complaint, Declaration of Taking and Notice of Deposit as Exhibit C thereto.

2. The proceedings as they appear from the pleadings are regular in all respects, all parties are properly before the Court and the case is, in all respects, appropriate for the entry of this final judgment.

3. Except as expressly set forth herein, none of Defendants are entitled to any further relief from Plaintiff, Town of Chapel Hill, as a result of this taking of the property interest identified on Exhibits B and C of the Complaint, Declaration of Taking and Notice of Deposit.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff, Town of Chapel Hill, has condemned and is and shall be permanently vested with the easement interest described in the Complaint, Declaration of Taking and Notice of Deposit filed in this action, and as further described in Exhibits B and C thereto as attached to this Consent Final Order and Judgment.

2. Persimmon Properties, LLC has received from the Clerk of Court, Orange County, the funds deposited in conjunction with this action by the Town of Chapel Hill in the amount of Fifteen Thousand Three Hundred and No/100 Dollars (\$15,300.00) and will receive an additional Nine Thousand Seven Hundred and No/100 Dollars (\$9,700.00) paid directly to it by the Town of Chapel Hill for the total sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), which constitutes the sole and exclusive amount to which Persimmon Properties, LLC is entitled for the property interest identified in Exhibits B and C of the Complaint, Declaration of Taking and Notice of Deposit as attached hereto.

3. No other Defendant in this action is entitled to further relief whatsoever for the taking of the property interests identified in Exhibits B and C of the Complaint, Declaration of Taking and Notice of Deposit as attached hereto.

4. This Order resolves all claims set forth in the Complaint, Declaration of Taking and Notice of Deposit.

5. A copy of this final judgment and order shall be certified under seal of the Court to the Register of Deeds of Orange County and the Register of Deeds be and hereby is ordered to record this judgment among the land records of Orange County.

6. Each party shall bear their own costs, including attorneys' fees.

This the _____ day of _____, 2014.

Superior Court Judge Presiding

CONSENTED TO:

COLEMAN, GLEDHILL, HARGRAVE,
MERRITT & RAINSFORD, P.C.

By: _____

James Rainsford

P.O. Box 1529
Hillsborough, NC 27278

Attorneys for Plaintiff, Town of
Chapel Hill

BROWN & BUNCH, PLLC

By: _____

LeAnn Nease Brown

101 N. Columbia Street
Chapel Hill, NC 27514
Telephone: (919) 968-1111

Attorneys for Persimmon Properties, LLC

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OCTOBER 19, 2011

EXHIBIT 6

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF CONDEMNATION
(EMINENT DOMAIN) ACTION

TO: Persimmon Properties, LLC
Attn: Mr. Neil Alderman, Registered Agent
1133 Pinehurst Drive
Chapel Hill, North Carolina 27517
HomeServices Lending LLC Series A
d/b/a HomeServices Lending
13620 Reese Boulevard
Huntersville, North Carolina 28078
Wells Fargo Home Mortgage
Attn: MAC # X9999-01
1000 Blue Gentian Road
Eagan, Minnesota 55121
Thornburg Mortgage
Attn: Ms. Nancy Holleran
425 Phillips Boulevard
Ewing, New Jersey 08618
William R. Echols, Trustee
c/o HomeServices Lending
d/b/a HomeServices Lending
13620 Reese Boulevard
Huntersville, North Carolina 28078
Orange Water and Sewer Authority
400 Jones Ferry Road
Carrboro, North Carolina 27510
Orange County Tax Collector
Post Office Box 8181
Hillsborough, North Carolina 27278

THIS LETTER IS A NOTICE OF ACTION under Chapter 40A of the North Carolina General Statutes that the Town of Chapel Hill intends to institute an action on or after November 18, 2011 to condemn by eminent domain the property described below in which you have or claim an interest.

The purpose for which the property is being condemned is:

Public Greenway.

The property is located in Chapel Hill, Orange County, North Carolina and is identified as follows:

208 Greene Street, Chapel Hill, North Carolina
Parcel Identification Number 9789-31-2426

The interest being condemned is described as follows:

12,378 square feet of permanent easement.

The Town of Chapel Hill estimates that the amount of just compensation for the property condemned is:

\$15,300.00.

COLEMAN, GLEDHILL, HARGRAVE & PEEK, P.C.

By:


Geoffrey B. Gledhill

State Bar No. 6633

P.O. Drawer 1529

Hillsborough, NC 27278

(919) 732-2196

Attorney for the Town of Chapel Hill

By:


Katherine Thrall Merritt

State Bar No. 38559

P.O. Drawer 1529

Hillsborough, NC 27278

(919) 732-2196

Attorney for the Town of Chapel Hill

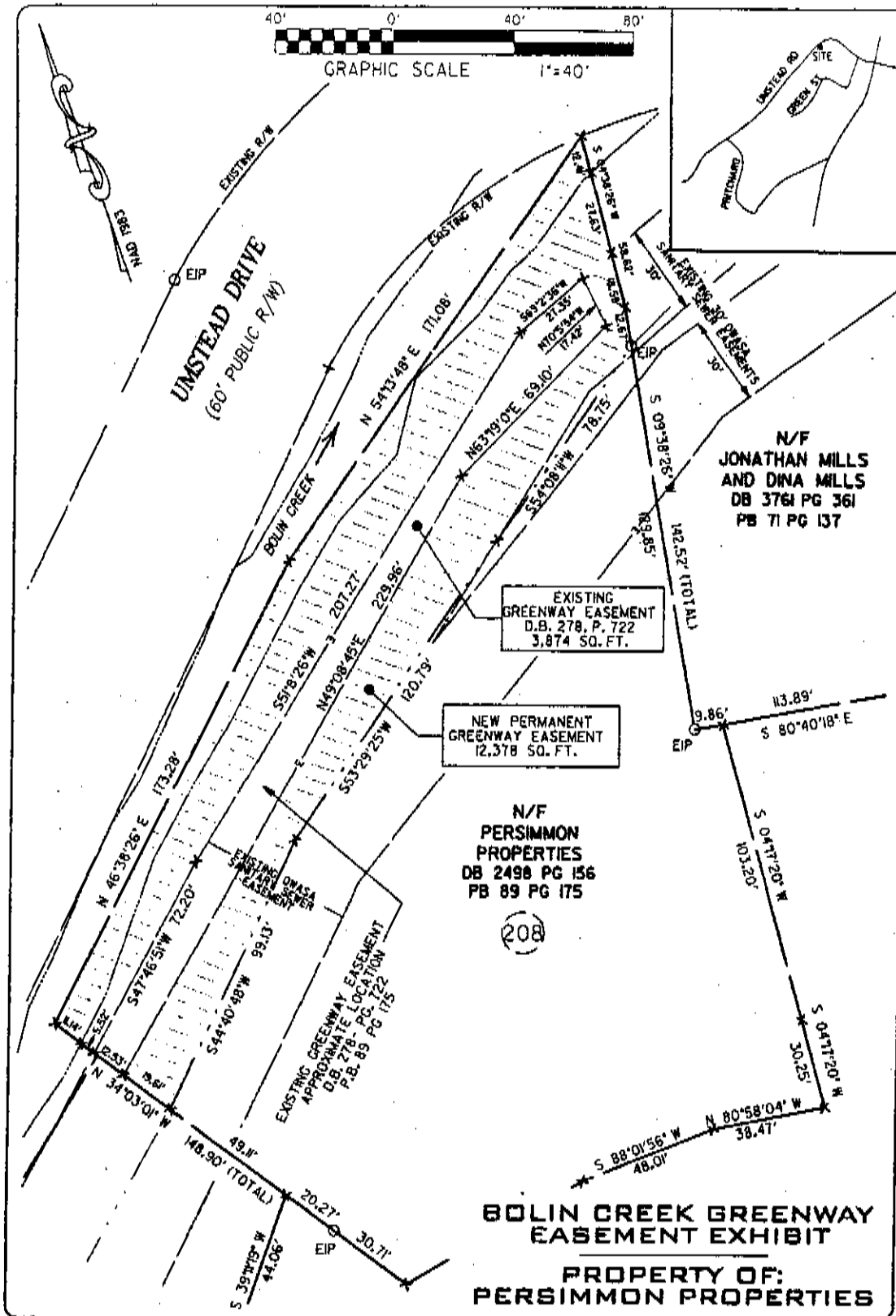


EXHIBIT C

NOTES:

1. ALL BOUNDARIES ARE DRAWN FROM RECORD INFORMATION AND NOTATED TO FIELD LOCATED MONUMENTATION.
2. EASEMENT INFORMATION TAKEN FROM DEEDS DRAWINGS PROVIDED BY LAPPAS & HAYES, P.A.
3. THE PURPOSE OF THIS EXHIBIT IS TO GRAPHICALLY DEPICT THE HORIZONTAL LOCATION OF THE PROPOSED PERMANENT GREENWAY EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS ASSOCIATED WITH THE BOLIN CREEK GREENWAY IMPROVEMENT PROJECT.
4. THIS EXHIBIT DOES NOT CONFORM TO N.C. G.S. 47-30 AS AMENDED.

7/13/09 REVISED SPELLING OF DINA MILLS

MULKEY PROPERTY PLANNING \$207188.00	
MULKEY FILE MARKING SHEET \$2,000.00	
DATE: 8-18-09	DRAWN BY: PL
SCALE: 1"=40'	CHECKED BY: SHW

I, C. ANDREW HEATH, JR., P.L.S. CERTIFY THAT THIS EASEMENT EXHIBIT WAS DRAWN UNDER MY SUPERVISION FROM REFERENCE TO THE DEEDS AND EXHIBITS THAT THE BOUNDARIES AND EASEMENTS WERE CLEARLY INDICATED AS BEING THE PROPERTY OF PERSIMMON FOR THE PROJECT. I HAVE REVIEWED THE EXHIBIT AND CERTIFY THAT THE INFORMATION IS CORRECT AND ACCURATE.

DATE: 8-18-09

C. ANDREW HEATH, JR.
P.L.S.
N.C. L-328

MULKEY
ENGINEERS & CONSULTANTS

PO BOX 22127
RALEIGH, N.C. 27602
(919) 881-1912
(919) 881-1913 FAX
WWW.MULKEYINC.COM
FIRM LICENSE NO. 0-1021